D.B. CIVIL SPECIAL APPEAL NO.344/1996
Madan Singh
Vs.
The State of Rajasthan & ors.

Date of Order :: 11-01-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE GOVIND MATHUR

Shri D.K. Parihar for the appellant.

This special appeal is directed against the order of the learned Single Judge dated 5.4.1996 in S.B. Civil Writ Petition no.3262/1995 dismissing the writ petition of the appellant.

The appellant had filed the writ petition challenging the decision of the State Government dated 25.8.1995 refusing to make reference of the dispute to the labour court under the Industrial Disputes Act.

Brief facts of the case are that the appellant was appointed as Conductor in the Rajasthan State Road Transport Corporation on daily wage on 16.11.1985. His services were terminated on 19.6.1986. He filed complaint raising dispute about his removal from service on 2.9.1994. On consideration of the matter, the Conciliation Officer submitted failure report on 11.11.1994. The Government took the view that the dispute had been

raised after a delay of eight years for which no explanation had been furnished in the course of conciliation. The Government also found that the appellant had been removed from service on charge of corruption after inquiry. The Government further noticed that the appellant did not complete 240 days in a calendar year.

Counsel for the appellant placing reliance on a decision of the Division Bench of this Court in Kanhiya Lal Vs. State of Rajasthan, 2004(1) DNJ (Raj.) 411 submitted that at the stage of consideration of failure report of the Conciliation Officer under Section 12(5) of the Industrial Disputes Act, the Government cannot refuse reference on the ground that the workman had been validly discharged after a proper enquiry and opportunity of hearing.

We are in respectful agreement with the view taken by this Court as aforesaid. It is settled position that at the stage of consideration of the matter under Section 12(5) of the Industrial Disputes Act, the State Government is not supposed to adjudicate the dispute. The adjudication can be made only by the labour court, industrial tribunal etc., as the case may be. In that view of the matter, we are unable to approve the findings recorded in the impugned order to the effect that as

the appellant had been found guilty of the corruption charges and he had not completed 240 days in service in a calendar year, the dispute could not be referred to the labour court for adjudication. These grounds were clearly irrelevant. Whether the removal from service of the appellant was justified or not and whether he had completed 240 days in service in a calendar year or not, were matters to be adjudicated by the labour court etc.

However, the reference was refused also on the ground of delay of eight years. Where the person sleeps over his rights and does not make complaint of the dispute for a long period, notwithstanding the merit of this case, the Government may refuse to make reference. It cannot be said in such a case that the Government had adjudicated upon the claim. Refusal to make reference being also on the ground of delay of eight years for which no explanation was furnished, we are unable to interfere with the order.

It is to be kept in mind that the period of eight years had passed by the time the appellant had raised the dispute in 1994, but as on date over twenty years have passed. The grievance of the appellant, it would appear, has become stale with the passage of time and interference with the impugned order at this stage would not be proper

exercise of discretion. The appellant must have found some other means of livelihood and reference of the dispute at this stage may unsettle the peace between the appellant on the one hand and the Corporation on the other hand which would not be in consonance with the spirit of the Industrial Disputes Act.

In the result, we find no merit in this appeal which is accordingly dismissed but without any order as to costs.

[GOVIND MATHUR],J. [S.N.JHA],CJ.

Skant/-